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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/519,365

12/28/2004

Shane Robert McGill

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3003

23117 7590 06/25/2008  
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EXAMINER

SOOHOO, TONY GLEN

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

06/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/519,365	<b>Applicant(s)</b> MCGILL ET AL.	
	<b>Examiner</b> Tony G. Soohoo	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-15 is/are rejected.
- 7) ☒ Claim(s) 7, 8 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/19/2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group I, claims 1-15 in the reply filed on 04/25/2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim interpretation***

2. Claim 9 states "drive means is arranged to rotate the blending element at different speeds ...". The claim is read to include further limiting structure to the drive means which rotates the blending element at different speeds.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1, 9, and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by MCGILL 6338569. ( note: WO 99/21466A (MCGILL) is of the same document family).

The MCGILL reference discloses:

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Blending apparatus (see figures 1 and 2) comprising a container (3) having an opening through which product to be blended is introduced into the container, a lid (2) to close the opening, a blending element (1) mounted on the lid (2) and directed downwards into the container when the lid is located thereon, drive means (8) driveably engageable with the blending element (1) to rotate the element and

obtain a blending action on product in the container (3), mounting means (10) on which an assembly of container, lid and blending element is arranged to be located during blending (figure 2), the container (3) being moveable between an upright receiving position (figure 1) and an operative position (figure 2) in which the assembly is inverted with the lid lowermost and the drive means (8) is connectable to the blending element (1).

The lid (2) has an opening to receive the blending element rotatably therein (page 7, lines 1-6 and figure 1).

The blending element includes a shaft (4D), at one end of which blending blades (4F) and at the other end driving connection means (4E) are carried.

With regards to claims 13-14, the recitation of "force fit" is directed to a method of making and does not impart a physical element or patentable structural limitation. In patentable distinction to the instant apparatus claims.

5. Claims 1-5, 10, 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al 5865538.

Walker et al discloses a container base assembly 700; an opening with a lid 721, 724, 720; blending element 730, 734 connected to a shaft 732, 730, (fig 10B) which sits upon bearing surfaces upon 722, 723; drive means 500; mounting means 300, 424, 400, 630 which may invert the container and having a container holder 300, 630, 424, 400; a clamping means 400, 424; a tapered seating 550 on the mounting means 540, 300; the device is further located in a

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housing ( the room and door enclosing the device); and also has reciprocal supports 630, 424, 400.

6. Claims 1, 5, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Desai 6331070.

The Desai reference discloses a container base 10, 20, 24; a lid 14, 35; a blending element 30, 34; drive means 54, 52; a mounting means 40, 42, and 51 (see dark portions touching the underside of 42), which cooperative to move the container base and to hold in an inverted position; the mounting means further located in a housing defined by 18, 48, 42, see figures 1,2); the drive means is located in the base of 18 below 48 and 16 , 42 of the housing.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al 5865538.

9. The Walker et al reference discloses all of the subject matter as recited in the claims with the exception of the drive means "is arranged to rotate at different speeds"

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The arrangement of drive means connected to a rotatable element involves the skill of an artisan of motive drives. An ordinary skill in the art of motive drives would have the common knowledge and ability to provide drives which produce different rotational speeds. Such of different rotational speeds has been old and well known in the art of blenders and rotative agitator mixers in order to produce a desired amount of mixing, blending, whipping, chopping, pureeing, stir, intensity. Accordingly, in light of such common knowledge of skill in the art of mixer motor control, and the desire of a precise mixer speed effect during mixing, it would have been obvious to provide for the drive means of the Walker et al reference with a further controller so that the device may produce a more precise mixing effect of blending, whipping, chopping, pureeing, stir, intensity.

***Allowable Subject Matter***

10. Claims 7-8, and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 20060039235, 4135828, 6241380, , 6802641, 6854875, 7066640, 7147365, 7168845, 7309156, and WO 9921466.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 8AM-5PM, Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tony G Soohoo/  
Primary Examiner, Art Unit 1797

Tony G Soohoo  
Primary Examiner  
Art Unit 1797